IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

FILED
03 JUN 20 AM 9:30

LISA GUNDERSON,

Plaintiff,

vs.

No. CIV
JURY DEMAND

BRADBURY STAMM CONSTRUCTION, INC., a New Mexico corporation,

CIV-03-0737 JP RLP

Defendant.

COMPLAINT FOR DAMAGES

COMES NOW, Plaintiff, Lisa Gunderson, by and through her counsel of record, J. Edward Hollington, J. Edward Hollington & Associates, P.A., and for her complaint against the Defendant, states:

JURISDICTION

1. Plaintiff, Lisa Gunderson, hereinafter "Ms. Gunderson", is a resident of Albuquerque, Bernalillo County, New Mexico.

2. Defendant, Bradbury Stamm Construction, Inc., hereinafter "BSC" is a New Mexico corporation principally located in Albuquerque, Bernalillo County, New Mexico.

3. Defendant BSC is an employer as defined by 42 U.S.C. § 2000e(b) and 29 U.S.C. § 2611(4).

4. Ms. Gunderson is female and a member of a protected group under Title VII of the 1968 Civil Rights Act and amended in 1991, 42 U.S.C. § 2000e, *et seq.*

5. All events and occurrences pertaining to this action occurred in Albuquerque, Bernalillo County, New Mexico.

6. On March 3, 2003, Ms. Gunderson filed a charge of discrimination with the Equal Employment Opportunities Commission ("EEOC") and the New Mexico Human Right Department ("NMHRD") as charge number 390-2003-00843, based on discrimination (sex) and retaliation.

7. On April 29, 2003, the EEOC mailed to Ms. Gunderson a "Notice of Right to Sue".

8. Ms. Gunderson has satisfied all administrative prerequisites for filing this complaint under Title VII, 42 U.S.C. § 2000e, *et seq*.

9. This court has jurisdiction over Ms. Gunderson's claims pursuant to 42 U.S.C. § 2000e, et seq., 29 U.S.C. § 2601, and 28 U.S.C. §§ 1331, 1367.

STATEMENT OF FACTS

10. Ms. Gunderson was employed by BSC as a project engineer from September 18, 2001 until September 13, 2002.

11. Ms. Gunderson was qualified to fill the position of project engineer. She has a bachelor of science degree in construction management from the University of New Mexico.

12. Ms. Gunderson received favorable employment evaluations during her employment with BSC.

13. In the spring of 2002, Ms. Gunderson learned that she was pregnant. She advised BSC management of her pregnancy.

14. Ms. Gunderson continued to work during her pregnancy. She was working as a project engineer on construction projects at Bosque Preparatory School and Gymnasium in Albuquerque, New Mexico and Dulce Schools in Dulce, New Mexico. These three projects were ongoing at the time of her termination

15. In mid-July of 2002, Ms. Gunderson asked Ellen Carle, BSC Human Resources

Manager, about the time she would be allowed for maternity leave under the Family Medical Leave Act ("FMLA"). The Human Resources ("HR") manager told Ms. Gunderson that she could only take time off until a doctor released her to return to work.

16. Ms. Gunderson objected to the HR manager's restrictions on FMLA leave and she (Ms. Gunderson) told the HR manager that she thought she was entitled to the full twelve (12) weeks under the FMLA.

17. The HR manager disagreed and insisted her leave was only as long as a doctor stated she was not able to return to work.

18. Following Ms. Gunderson's conversation with the HR manager regarding FMLA leave, Ms. Gunderson contacted Mickey Beisman, vice-president and general counsel of BSC, to express her concerns about violations of FMLA by the HR manager. BSC's vice-president and general counsel wrote a memo to BSC's CEO on July 31, 2002 confirming that forcing female employees on maternity leave to return before the full twelve (12) week period amounted to violations of FMLA.

19. Less than eight (8) weeks after Ms. Gunderson objected to violations of FMLA, she was terminated.

20. Management of BSC had been advised in May, 2002 of widespread concern of female employees about discriminatory conduct against them by management and male supervisors.

21. During 2002, BSC had in effect written policies and procedures requiring it to investigate all charges of discrimination.

22. BSC did not investigate the complaints made by female employees in May, 2002 about discrimination.

23. BSC terminated Mickey Beisman (female), vice-president and general counsel, after she objected to discrimination against females and FMLA violations.

24. On September 12, 2002, the date Ms. Gunderson was terminated, the projects she had been working on were not completed and were ongoing.

25. Following Ms. Gunderson's termination, BSC replaced her with a male who had less qualifications and BSC hired new employees around the same time.

26. At the time BSC terminated Ms. Gunderson, Ms. Gunderson did not have the least seniority of project engineers.

27. At the time BSC terminated Ms. Gunderson, BSC knew she intended to take maternity leave for the birth of her first child.

28. BSC terminated Ms. Gunderson before she was able to take her maternity leave under FMLA.

29. BSC engaged in a pattern and practice of discrimination against females.

30. Ms. Gunderson has lost income, including benefits, back pay and front pay, compensatory damages including emotional distress as a proximate result of Defendant's wrongful conduct.

31. BSC's conduct constitutes willfull, wanton, malicious and careless disregard for Ms. Gunderson's protected rights.

32. Ms. Gunderson has incurred costs and legal fees in bringing these claims.

COUNT I
VIOLATIONS OF TITLE VII (SEX DISCRIMINATION) 42 U.S.C. § 2000e(2)(a)

33. Plaintiff hereby incorporates all allegations contained in the foregoing paragraphs 1 through 32 above as though the same are fully set forth herein.

34. Ms. Gunderson is a member of a protected group.

35. Ms. Gunderson was qualified for the position of project engineer and she satisfactorily performed her job duties and job functions.

36. BSC took adverse employment action against Ms. Gunderson when it terminated her employment in September, 2002.

37. BSC replaced Ms. Gunderson with a male who is not a member of a protected class.

38. Other employees similarly situated to Ms. Gunderson, but not members of a protected class were treated more favorably than Ms. Gunderson.

39. As a proximate result of BSC's discriminatory conduct, Ms. Gunderson has lost income, including benefits, back pay, front pay, other pecuniary losses and compensatory damages.

40. BSC's conduct is wanton, willful, malicious and done in reckless disregard for Ms. Gunderson's protected rights and she is further entitled to punitive damages.

WHEREFORE, Plaintiff respectfully requests this Court to enter judgment in her favor and against Defendant and award her damages for loss of income, including benefits, back pay, front pay, pecuniary losses, compensatory damages including emotional distress, punitive damages, prejudgment and postjudgment interest, attorney fees, costs and such other and further relief as the Court deems just and appropriate.

COUNT II
VIOLATIONS OF TITLE VII (PREGNANCY DISCRIMINATION ACT)
42 U.S.C. § 2000e(K)

41. Plaintiff hereby incorporates all allegations contained in the foregoing paragraphs 1 through 40 above as though the same are fully set forth herein.

42. Ms. Gunderson is a member of a protected group.

43. Ms. Gunderson was qualified for the position of project engineer and she satisfactorily performed her job duties and job functions.

44. BSC took adverse employment action against Ms. Gunderson when it terminated her employment in September, 2002.

45. BSC replaced Ms. Gunderson with a male who is not a member of a protected class.

46. Other employees similarly situated to Ms. Gunderson, but not members of a protected class were treated more favorably than Ms. Gunderson.

47. As a proximate result of BSC's discriminatory conduct, Ms. Gunderson has lost income, including benefits, back pay, front pay, other pecuniary losses and compensatory damages.

48. BSC's conduct is wanton, willful, malicious and done in reckless disregard for Ms. Gunderson's protected rights and she is further entitled to punitive damages.

WHEREFORE, Plaintiff respectfully requests this Court to enter judgment in her favor and against Defendant and award her damages for loss of income, including benefits, back pay, front pay, pecuniary losses, compensatory damages including emotional distress, punitive damages, prejudgment and postjudgment interest, attorney fees, costs and such other and further relief as the Court deems just and appropriate.

COUNT III
RETALIATION

49. Plaintiff hereby incorporates all allegations contained in the foregoing paragraphs 1 through 48 above as though the same are fully set forth herein.

50. Ms. Gunderson engaged in protected activity when she objected to BSC's policy of requiring pregnant employees to limit their maternity leave.

51. Within eight (8) weeks of Ms. Gunderson's objections to BSC's discriminatory conduct, Ms. Gunderson was terminated.

52. Ms. Gunderson's employment was terminated in part because of BSC's retaliation against her for her protected activity.

53. As a proximate and direct result of BSC's retaliatory conduct, Ms. Gunderson has lost income, including benefits, back pay, front pay, other pecuniary losses and compensatory damages.

54. BSC's conduct is wanton, willful, malicious and done in reckless disregard for Ms. Gunderson's protected rights and she is further entitled to punitive damages.

WHEREFORE, Plaintiff respectfully requests this Court to enter judgment in her favor and against Defendant and award her damages for loss of income, including benefits, back pay, front pay, pecuniary losses, compensatory damages including emotional distress, punitive damages, prejudgment and postjudgment interest, attorney fees, costs and such other and further relief as the Court deems just and appropriate.

COUNT IV
VIOLATIONS OF FMLA 29 U.S.C. § 2615

55. Plaintiff hereby incorporates all allegations contained in the foregoing paragraphs 1 through 54 above as though the same are fully set forth herein.

56. BSC's attempts to restrict Ms. Gunderson and other female employees's maternity leaves violated 29 U.S.C. § 2615(a)(1).

57. BSC's termination of Ms. Gunderson's employment following her objections to violations of FMLA constitute violations of 29 U.S.C. § 2615(a)(2).

58. As a proximate result of BSC's FMLA violations, Ms. Gunderson has lost wages,

benefits and other pecuniary losses.

WHEREFORE, Plaintiff respectfully requests this court to enter judgment in her favor and against the Defendant and award her damages pursuant to 29 U.S.C. § 2617(a)(1)(A)(i)(iii), attorney fees, costs and such equitable relief as the Court may deem just and appropriate pursuant to 29 U.S.C. § 2617(a)(1)(B).

COUNT V
RETALIATION (COMMON LAW)

59. Plaintiff hereby incorporates all allegations contained in the foregoing paragraphs 1 through 58 above as though the same are fully set forth herein.

60. It is public policy of the State of New Mexico that employers are not to discriminate and retaliate against employees when they object to discriminatory conduct and violations of FMLA.

61. Following Ms. Gunderson's objections about discrimination and violations of FMLA, BSC took adverse employment action against her when she was terminated on September 12, 2002.

62. Ms. Gunderson's complaints and objections regarding discrimination and violations of FMLA were in part motivating factors in BSC's decision to terminate her employment.

63. As a proximate result of Defendant's retaliatory conduct, Ms. Gunderson has suffered losses, including loss of income and benefits including back pay, front pay, emotional distress and other compensatory damages.

64. BSC's conduct was wanton, willful, malicious and constitutes careless disregard of Plaintiff's protected rights.

WHEREFORE, Plaintiff respectfully requests this Court to enter a judgment in her favor and against the Defendant for the common law claim of retaliatory discharge and award her compensatory damages as allowed under New Mexico law (Weidler v. Big J Enterprises, Inc., 1998 NMCA-021, 124 NM 591), punitive damages, costs, prejudgment and postjudgment interest and for such other and further relief as the Court deems just and appropriate.

Respectfully submitted,

J. EDWARD HOLLINGTON & ASSOCIATES, P.A.

J. Edward Hollington
Attorney for Plaintiff
708 Marquette Ave. NW
Albuquerque NM 87102
(505) 899-9184